

***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

+WRIT PETITION No.14443 OF 2006

%Dated 21.09.2006

E.Ravinder and another

... PETITIONERS

\$ Govt. of A.P., Municipal Administration and Urban
Development (II) Department of Secretariat,
Hyderabad, rep., by its Principal Secretary and others.

...RESPONDENTS

! Counsel for Petitioner: Sri O.MANOHER REDDY
^ Counsel for Respondents: GP FOR MUNICIPAL ADMN & URBAN
DEVELOPMENT
Smt. G.JYOTHI KIRAN
Sri T.NIRANJAN REDDY

< GIST:

> HEAD NOTE:

? Cases referred:

THE HON'BLE MR JUSTICE P.S.NARAYANA

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WRIT PETITION No.14433 of 2006

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Date 21-09-2006

Between:
E.Ravinder and another.

..... PETITIONER

AND

Govt. of A.P. Municipal Administration and Urban Development (II)
Department Secretariat, Hyderabad rep by its Principal Secretary
and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.14433 of 2006

ORDER:

The writ petitioners filed the present writ petition for a writ of Mandamus or any other appropriate writ or direction declaring the action of the 3rd respondent in proposing to construct a parking complex in Old Jail, Secunderabad as illegal, arbitrary and contrary to the regulation issued by the second respondent in respect of heritage buildings and pass such other suitable orders.

It is stated that the third respondent herein owns a building popularly known as Old Jail Building complex, Subhash Road, (Monda Market) Secuderabad. The said building has been rented to various individuals including the petitioners herein long back and they have been regularly paying the rents fixed by the third respondent. It is also stated that a portion of the building, which are godowns, had been given to them in the old jail and they are in occupation of the said godown. Opposite to the shops, there is an open space which is being used for the purpose of ingress and egress to the vehicles and in a portion of this space, the third respondent had granted permission for construction of the sulabh complex for public convenience. It is further stated that the Government of Andhra Pradesh had issued G.O.Ms.No.185, dated 22-04-2006 in exercise of the powers conferred under Regulation 13(1) of the Hyderabad Urban Development Authority Zoning regulations, 1981 made under sub-section (1) of Section 59 of the

A.P.Urban Areas (Development) Act, 1975 notifying the old jail complex building as a heritage building. It is also stated that in the said notification, the old jail complex has been notified as heritage building of Grade II. It is further stated that the Government had issued various G.Os with regard to conservation of historical area and the building thereon in Hyderabad city. As per the regulations that have been issued by the Government, especially in respect of Grad II(B) heritage building, it has been specifically mentioned that in addition to the above extension or additional buildings in the same plot or compound, in certain circumstances, be allowed provided that the extension/additional building is in harmony with and does not detract from existing heritage building or height and façade. It is further stated that in so far as the procedure is concerned, it has been specifically mentioned that the development permission for the changes would be given by the Vice Chairman, Hyderabad Urban Development Authority, in consultation with the sub-committee of the heritage conservation committee. It is also further stated that the Government also constituted heritage conservation comprising of certain members. It is further stated that on a reading of the regulations of the Hyderabad Urban Development Authority, it is clear that there is a limited scope for changes in respect of buildings which have been notified as heritage buildings and also the procedure for obtaining the permission from the second respondent. It is also further stated that contrary to the said regulation that had been framed by the Urban Development Authority, the third respondent issued a notification, published in Hindu Daily dated 26-06-2006, wherein the third respondent proposed for development of Municipal Markets and parking complexes under Public Private Partnership (PPP) mode and Build Operator Transfer system (BOT) in Hyderabad and Secunderabad. In the said notification in parking

complexes, the third respondent had proposed to construct a parking complex in the old jail, Secuderabd in an extent of 968.66 sq. mts. It is stated that the action of the third respondent in proposing to construct a parking complex in the open space in the midst of the old jail complex abutting the godowns on two sides and thereby preventing the ingress and egress to the vehicles coming to the godown and further, constructing the complex contrary to the regulations that have been framed by the Government is illegal and arbitrary. It is further stated that the Hyderabad Urban Development Authority in exercise of the powers under sub-section (1) of Section 59 of the Andhra Pradesh Urban Areas (Development) Act 1975 and with the previous approval of the government had made amendments to the Hyderabad Urban Development Authority Zoning Regulations, 1981. As per regulation 13, the scope for changes for heritage building of a particular grade and the procedure had been prescribed. It is also stated that the proposed construction would be contrary to the regulations which had been framed. It is further stated that the propped parking complex would detract the height and façade. Further, it was stated that the building had been constructed 150 years ago by using lime and sand and any constructions in the vicinity would damage the heritage structure. It is further stated that the regulations specifically provide that the development permission for the changes should be given by the Vice Chairman of HUDA in consultation with the sub committee of heritage conservation committee.

Sri T.Niranjan Reddy, learned counsel representing the second respondent, had placed before this Court Heritage Conservation Committee 66th meeting minutes dated 31-07-2006 and item No.6 reads as under:

**“Proposal of the Municipal Corporation of
Hyderabad seeking NOC to construct a parking complex**

in the central courtyard area of the recently notified Old Jail Complex in Secunderabad near Monda Market.

The Heritage Conservation Committee noted that while the MCH has sought an NOC from the Committee, the Shop Owners Association has filed a W.P.No.14433 of 2006 in the Andhra Pradesh High Court against the proposal. HUDA has been made one of the respondents.

The Committee examined the proposal and made the following observations:

The Old Jail was located on a very congested road leading to the main entrance to Monda Market. This was essentially a shopping street and there is a need to restrict motor vehicles entering in to and passing through the area. The inner courtyard of the Old Jail complex (which is now a shopping centre) was approached through a street which is even more narrower. The courtyard is presently used as an open parking area for cars and other vehicles. It was suggested that members will inspect the site and the matter can be discussed in the next meeting.”

Respondent No.3 filed counter affidavit and at para 3 of the counter affidavit it is averred that the Municipal Corporation of Hyderabad owns a building called as old jail building at Subhash road, Secunderabad and the same was let out to individuals on rental basis and in the said building some godowns were there, opposite to which there is an open space admeasuring 968.66 sq.mts, being used by the tenants for the purpose of toilets, dumping waste material etc., and creating unhealthy climate. It is also stated that the said building is located at the prime junction in Secunderabad area, a good business centre, consisting of shops/godowns etc., and there is no proper place to park the visitors’ vehicles.

It is further stated that the respondent-Corporation had proposed to construct a municipal parking complex in the Old Jail Complex, without touching/disturbing the heritage building, where sufficient open space is available, and the Government of A.P. vide

G.O.Ms.No.160 dated 06-04-2006 permitted all the Commissioners of Municipal Corporations in the State for construction of municipal markets under Public Private Partnership (PPP) mode and construction of parking complex under Build Operate and Transfer (BOT) system, and in view of the severe traffic problem in twin cities and also in view of the orders issued by the Government in the above referred G.O., the Municipal Corporation of Hyderabad had decided to construct parking complexes in various places (busy areas) in order to redress the parking problem and traffic congestion. In the light of the said orders the respondent corporation has initiated the work of redevelopment of municipal markets and construction of municipal parking complexes and initially it has been proposed to redevelop for municipal markets and to construct five parking complexes, and the open space available in the said complex is one amongst them. The respondent corporation on verifying all the aspects issued a paper notification calling the "expression of interest-cum-request for qualification" from the interested firms/developers in the public interest in large and the above proposals are initiated by the respondent corporation with a view to facilitate the people of the twin cities and to redress traffic and parking problem.

It is also stated that the respondent corporation will utilize the available open space without disturbing the heritage structure. A letter vide Lr.No.590/EO/E6/MCH/2006/689, dated 18-08-2005 was addressed to the Vice-Chairman, HUDA for issuance of 'No objection certificate' and the report in the matter is awaited. After receipt of 'no objection' from the HUDA authorities, the further action to construct parking complex in the said open space available in old jail complex will be taken up. The Engineering Wing of the respondent corporation will examine the said open space,

admeasuring 968.66 sq.mts, adjacent to the said building and assess the structure stability and take all precautionary steps to protect the heritage structure. The respondent corporation has taken up innovative method to create more parking space in multi level parking complex under BOT system to reduce the acute parking problem in a systematic manner and scientific method. This Court in W.P.No.10360 of 2004 dated 29-06-2006 (taken up *suo moto*) while discussing on “providing parking area in the city and effective implementation of the prohibition against parking of vehicles on public roads and lanes” opined that four areas identified by MCH for construction of multistoried parkings are not sufficient and the problem of traffic congestion will continue to grow and, therefore, directed the State Government and also the respondent corporation to undertake a comprehensive technical study of the availability of space in twin cities as well as Cyberabad and prepare a comprehensive action plan for construction of multi-storied parkings in addition to the four places, which have already been identified and ordered to submit a report prepared on the basis of this exercise before the next date of the said case, so that, if necessary, direction could be given for construction of more multi-storied parkings on BOT basis, as there is acute problem of the traffic congestion and deficit of parking places. It is stated that the petitioners herein filed the said writ petition for their personal gain and inconvenience and the construction of parking complex is in the interest of the public at large. Therefore, the petitioners personal inconvenience may not be taken into consideration.

Regulation 13 referred to supra reads as under:

Conservation of Listed buildings, areas, artefacts, structures and precincts of historical and / or aesthetical and / or architectural and/ or cultural value (heritage buildings and heritage precincts) including rock formations:

1. Applicability:

This regulation will apply to those buildings, artefacts, structures and precincts of historical and / or aesthetical and / or architectural and/ or cultural value (Heritage Buildings and Heritage Precincts), which will be listed in notification(s) to be issued by the Government.

The Authority shall invite public objections and suggestions in three local daily newspapers before finalizing the list. Restrictions on Heritage Buildings and Heritage Precincts shall be in force with effect on and from the date of first notification.

2. Restriction on development/redevelopment /repairs etc,

- (i) No development or redevelopment or engineering operation or additions, alterations, repairs, renovation including the painting of buildings, replacement of special features or demolition of the whole or any part thereof or plastering of said Heritage buildings or Heritage Precincts shall be allowed except with the prior written permission of the Vice-Chairman, Hyderabad Urban Development Authority. The Vice-Chairman, Hyderabad Urban Development Authority shall act on the advice of/in consultation with the Heritage Conservation Committee to be appointed by Government (hereafter called “the said Heritage Conservation Committee):

Provided that in exceptional cases, for reasons to be recorded in writing, the Vice-Chairman, Hyderabad Urban Development Authority may overrule the recommendation of the Heritage Conservation Committee:

Provided further that the power to overrule the recommendations of the Heritage Conservation Committee shall not be delegated by the Vice-Chairman, Hyderabad Urban Development Authority to any other Officer.

It is submitted by the standing counsel representing both the

respondents 2 and 3 that unless and until the Heritage Conservation Committee inspects and takes a decision, no further steps in this regard would be taken and this Court is of the considered opinion that the writ petitioners had approached this Court on apprehension. However, this Court records the respective stands taken by both the standing counsel representing respondents 2 and 3. It is made clear that unless and until a decision is taken by the Heritage Conservation Committee in this regard, no further steps to be proceeded with.

With the above observation, the writ petition is disposed of. No order as to costs.

21-09-2006

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